

OCT 12 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

800 Data Base Access Tariffs and the
800 Service Management System Tariff

BellCore and Participating BOCs
Petition for Waiver
US West Communications, Inc. Contingent
Petition for Waiver
GTE Service Corporation Petition for
Waiver

CC Docket No. 93-129

DA 93-930

COMMENTS IN OPPOSITION

The Ad Hoc Telecommunications Users Committee (Ad Hoc) hereby opposes the above-captioned petitions for waiver of the Commission requirement in the present proceeding that, "[P]rice cap LECs using computer models to develop costs in their direct cases must disclose those models on the record if their justification for their rates is based on the use of the model."^{1/} The above-captioned petitions for waiver fail to provide justification for the relief requested.

A. The Designation Order

Among the issues being investigated in this proceeding is whether the exogenous costs claimed by price cap LECs are

^{1/}800 Database Access Tariffs and the 800 Service Management Tariff (CC Docket No. 93-129), DA 93-930, Chief, Common Carrier Bureau, released July 19, 1993, (hereinafter the Designation Order).

reasonable.^{2/} As noted in the Designation Order, some LECs used the Common Channel Signalling Cost Information System (CCSCIS), or a similar model, to estimate the cost to 800 Database Basic service.^{3/} At least two LECs, however, did not rely on CCSCIS, or a similar computer model, to develop the alleged exogenous cost of providing 800 Database Basic service.^{4/} In light of the fact that two LECs did not need to rely upon a proprietary computer model, the Common Carrier Bureau concluded that price cap LECs which claim to have used such computer models to develop the exogenous costs which their direct cases claim to support must disclose those models on the record if the justification for their 800 Database Basic service rates is based on the use of such models.^{5/} The Bureau reasoned that since two LECs were able to develop costs for 800 Database Basic service without such computer models, LECs need not rely exclusively on such proprietary models in their direct cases.

B. Carrier Waiver Requests

On September 16, 1993, Bell Communications Research, Inc. (BellCore) and participating BOCs filed a petition for waiver of the requirements specified in paragraph 29 of the Designation Order. BellCore and the participating BOCs state:

^{2/}Designation Order paras. 25-29.

^{3/}Id., para. 28.

^{4/}Id., para. 28, n. 23.

^{5/}Id., para. 29.

The Bureau apparently was under the impression that some Local Exchange Carriers did not rely on Computer models, such as CCSCIS, to develop their rates and, therefore, that all Local Exchange Carriers could support their rates without use of such models. As such, it would be unnecessary to produce CCSCIS. As explained below by BellCore and the participating Bell operating companies, that is not the case.^{6/}

BellCore and the participating BOCs contend that the Commission should not require disclosure of the CCSCIS computer model to other parties because such disclosure would endanger BellCore's alleged proprietary interest in the CCSCIS model. BellCore and the participating BOCs argue that BellCore's CCSCIS model qualifies as a trade secret and is confidential business information and as such should not be disclosed. Moreover, they assert that they should not be required to disclose switch vendor cost inputs used in the CCSCIS model because such a requirement would result in switch vendors being unwilling in the future to provide BellCore with such proprietary cost data -- data which the participating BOCs and BellCore contend is necessary for precise cost modelling. Substantively identical arguments are made by US West and GTE in their waiver requests.^{7/}

^{6/}BellCore and participating BOCs, Petition for Waiver, at 1-2, (hereinafter the BellCore Petition for Waiver).

^{7/}US West, Contingent Petition for Waiver, at 1-2; GTE, Petition for Waiver, at 3-5.

C. The Commission Should Deny the Petitions for Waiver

As noted above, the Designation Order found that two LECs (Southwestern Bell and Pacific Bell), did not use the CCSCIS, or a similar, model to estimate the alleged exogenous costs which they claim to recover through the 800 Database Basic charge. The petitions for waiver appear to dispute, but do not actually dispute, the Designation Order's finding that two LECs did not use the CCSCIS model, or a similar computer model, to identify exogenous costs for 800 Database Basic service. Instead, the petitions for waiver artfully attempt to gloss over the distinction between utilizing CCSCIS or a similar model to determine exogenous costs for 800 Database Basic service on the one hand and on the other hand using such models in connection with identification of nonexogenous costs associated with 800 database vertical services. A careful reading of the BellCore Petition for Waiver reveals that it does not state that the Common Carrier Bureau was incorrect in concluding in footnote 23 of the Designation Order that Pacific Bell and Southwestern Bell did not use CCSCIS or similar models to develop their rates for 800 Database Basic service.

The BellCore Petition for Waiver could mislead the Bureau by stating, "The Bureau apparently was under the impression that some Local Exchange Carriers did not rely on computer models, such as CCSCIS, to develop their rates As explained below by BellCore and the participating Bell

operating companies this is not the case."^{8/} BellCore's Petition for Waiver then states,

Each LEC that included capital-related costs used CCSCIS or a similar model to calculate its 800 database service costs. Alternative means for accurately developing the costs of 800 database service switch features do not exist. The inputs for determining those costs and the model itself have always been maintained on a confidential basis, and their public disclosure would inflict great competitive harm. This is so because 800 database service vertical feature costs reflect the costs of record storage and processing by the Service Control Point (SCP). The SCPs manufactured by different vendors have different performance characteristics and costs.^{9/}

All of the participating BOCs may very well have used CCSCIS or a similar model to develop the 800 database vertical features rates. As reflected in footnote 23 of the designation order, however, Pacific and Southwestern did not use such models to develop the exogenous costs and rates for 800 Database Basic access service. The BellCore petition for waiver never directly disputes footnote 23 of the Designation Order. The Bureau was correct in holding that, "Since . . . two LECs were able to develop costs for 800 database service without such computer models, LECs do not need to rely exclusively on such a model for the service."^{10/}

^{8/}BellCore Petition for Waiver, at 1-2.

^{9/}Id., at 2-3, (emphasis added).

^{10/}Designation Order, n. 24. There is an additional substantive reason for doubting the importance of CCSCIS to the issue of whether the exogenous costs claimed by the price cap LECs are
(continued...)

The petitions for waiver, however, attempt artfully to divert the Commission's attention from the fact that at least two LECs did not use CCSCIS or a similar model to develop 800 Database Basic service exogenous costs by urging the Commission to find that because certain LECs used non-public domain computer programs and because vender specific switch costs are inputs to such programs, private parties should not have access to the programs and cost inputs. However, as noted above, the petitions for waiver do not assert that exogenous costs cannot be developed without the use of such models, and do not state that Pacific and Southwestern used CCSCIS or a similar model to identify the claimed exogenous costs associated with the provision of 800 Database Basic service.

10/ (...continued)

reasonable. The Designation Order at paragraph 25 points out that the Commission already has determined that, " Exogenous treatment will only extend to those costs incurred specifically for the implementation of basic 800 database service." (Emphasis added) Use of CCSCIS to allocate common computer costs does not identify costs incurred specifically for the implementation of basic 800 database service. In its direct case Southwestern New England Telephone (SNET) Company states:

In developing the costs for its basic 800 query, SNET did not use the CCSCIS model. This model, if used for the development of the basic 800 query would have identified shared costs that would not qualify for exogenous treatment (SS7, SSP and STP related costs). SNET, more appropriately developed 800-specific costs by identifying the activities necessary to implement and operate an 800 data base system.

SNET, Direct Case, pages 10-11. Thus, the Commission is absolutely right in having concluded that LECs need not use CCSCIS to identify the exogenous costs (if any) associated with the provision of 800 Database basic service. Indeed, SNET's direct case indicates that it is improper to use CCSCIS to identify costs that might qualify for exogenous treatment.

In view of the foregoing analysis, further discussion regarding the petitions for waiver should be superfluous. However, out of an abundance of caution, Ad Hoc is compelled to address the broad policy arguments raised by the petitions for waiver. The petitions seem to argue that the cost data submitted to the Commission in future cases will be less precise, and therefore less reliable, if carriers cannot use cost information and computer models which are not open to examination for limited purposes by adverse parties. The petitioners seem to present the Commission with a Hobson's choice: accept unreliable cost data or deny interested parties access to the data which petitioners claim is more precise, and therefore presumably more reliable. The Commission, however, need not choose among the undesirable alternatives presented by the LECs and BellCore.

The LECs must carry the burden of proving that their 800 Database Basic service rates are designed only to recover proper exogenous costs. The Commission has given the LECs over sixty days to present their cases in a way which does not compromise the interests of other parties. If the LECs choose not to provide such proof, they will have failed to justify their 800 Database Basic service rates. The choice is the LECs', not the Commission's.

The Commission is absolutely right to require public disclosure of the cost models and information used to justify the exogenous costs that the LECs claim must be recovered through 800 Database Basic service rates. The Commission should not repeat

the seemingly endless process that was followed in ONA rate investigation and that has so drained Commission and private resources. Nor should the Commission forego the benefit of the adversarial process -- a process that would allow non-LEC interested parties to provide the Commission with their analysis of the LECs' cases. Neither the Commission nor any single party, is likely to be sufficiently insightful to provide a comprehensive review of the LECs' cases. Our entire system of justice is based on full participation by interested, adverse parties. Such participation should be abridged only in extraordinary circumstances -- circumstances that do not exist in this case for the reasons set forth above.

The LECs obviously are attempting to build on the Commission's treatment of SCIS and related data in the ONA rate case. Their apparent goal is to prevent public inspection of relevant cost data. Historically, the public almost always has had access to carriers' cost of service data. Access to such data should not be abridged because the carriers are deploying a new technology -- SS7. New technology should not be the cause for limiting the public's rights. If the Commission grants the pending petition for waiver, it and the public would be denied the benefits of the adversarial process; and the objectivity and fairness of the Commission's review and processes understandably would be questioned. This situation need not occur. The petitions for waiver should be denied.


Conclusion

In view of the foregoing, the Ad Hoc Telecommunications Users Committee respectfully requests that the Commission deny the above-captioned waiver requests.

Respectfully submitted,

**AD HOC TELECOMMUNICATIONS
USERS COMMITTEE**

By:

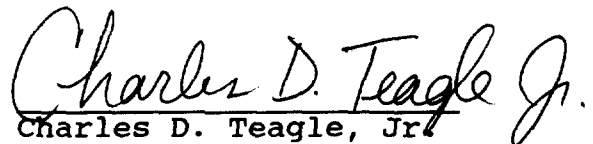

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October 12, 1993

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CERTIFICATE OF SERVICE

I, Charles D. Teagle, Jr., a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 12th day of October, 1993, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing **COMMENTS IN OPPOSITION** to the following:


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